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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,491	07/06/2006	Bernd Lang	4750-45	9424
23117 7590 08/06/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
BLIZZARD, CHRISTOPHER JAMES				
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3771				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/578,491

**Applicant(s)**

LANG ET AL.

**Examiner**

CHRISTOPHER BLIZZARD

**Art Unit**

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 33, 34 and 36-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33, 34 and 36-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This office action is in response to amendment filed 5/05/09. As directed claims 33, 34, 36-64 were amended, claims 65 and 66 were added, and 1-32 and 35 have been cancelled. Therefore this application currently has claims 33, 34, and 36-66 pending.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 33, 34, 36-40, 42, 43, 45-58, 61 and 65 are rejected under 35

U.S.C. 102(b) as being anticipated by Kenyon (6,216,691).

4. Regarding claims 33 and 65, Kenyon disclose a CPAP device, having a delivery device (13) for delivering the respiratory gas at a pressure level that is above the ambient pressure, a housing device (18), for receiving the delivery device, and an air-conduction structure (20) for conducting the respiratory gas from the delivery device to an outlet region, wherein the air-conduction structure is embodied as a molded foam part made from a foamed material (column 2, lines 38-44, lines 53-56) that is subdivided into a first portion (93) and a second portion (94) that each include a recess that cooperate to form the walls that define an air carrying conduit (91) (column 6, lines 7-9).

5. Regarding claim 34, Kenyon discloses the device wherein the molded foam part defines air-carrying conduits (91) (fig. 10).

6. Regarding claim 36, Kenyon discloses the device wherein the air-conduction structure is embodied such that it forms a sound absorption path (column 3, lines 25-27).
7. Regarding claim 37, Kenyon et al. discloses the device wherein a sound absorption path is formed upon the cooperation of a first portion (93) of the foam molded part with a second portion (94) of the foam molded part (column 6, lines 6-10) (fig. 10).
8. Regarding claim 38, Kenyon discloses the device wherein a sound absorption path (91) is formed in some portions by a first portion (93) of the foam molded part and in some portions by a second portion (94) of the foam molded part (column 6, lines 6-10) (fig. 10).
9. Regarding claim 39, Kenyon discloses the device comprising a support structures for bracing the molded foam part (column 3, lines 46-48).
10. Regarding claim 40, Kenyon discloses the device wherein the molded foam part is detachably coupled to the support structures (column 3, lines 35-36).
11. Regarding claim 42, Kenyon discloses the device wherein the molded foam part defines a receiving portion (22) to elastically and resiliently receiving the delivery device(13) (column 4, lines 45-47) (fig. 1).
12. Regarding claim 43, Kenyon et al. discloses the device wherein the receiving portion (22) is embodied such that the delivery device (13) is received in it without play, with a slight press fit (column 4, lines 45-49) (fig. 1).

13. Regarding claim 45, Kenyon discloses the device wherein at least one of the portions of the molded foam part forms a filter device (column 5, lines 51-52).
14. Regarding claim 46, Kenyon discloses the device wherein a filter device is coupled to the molded foam body (column 5, lines 51-52).
15. Regarding claim 47, Kenyon discloses the device wherein the molded foam body forms a portion (72) to stand on (column 5, lines 30-33).
16. Regarding claim 48, Kenyon discloses the device wherein the housing device forms a receiving jacket and is placed onto the molded foam part (column 5, lines 54-57).
17. Regarding claim 49, Kenyon et discloses the device wherein at least some of the air-conduction conduits (66) are formed by an outer surface region of the molded foam part (column 5, lines 25-31) (fig. 5).
18. Regarding claim 50, Kenyon et discloses the device wherein the sound absorption path (91) has a multiply winding course (column 6, lines 7-9) (fig. 10).
19. Regarding claim 51, Kenyon discloses the device wherein the inner wall of the conduit (70), which surrounds the sound absorption path and is formed by the foam body or a coating provided on it, is provided with sound absorbing profile sections (column 6, lines 25-29) (fig. 11).
20. Regarding claim 52, Kenyon discloses a CPAP device, comprising a core module (50) and an outer module provided for receiving the core module (column 5, lines 54-57), wherein the core module includes a foam body (column 5, line 13), and an air-conduction path (25) is embodied in the foam body and is in communication with a

respiratory gas delivery device (14) (fig. 6), for furnishing a respiratory gas conduction portion with sound absorbing properties (column 2, lines 53-56); the foam body is divided into a first portion (52) and a second portion (74) that cooperate to each define a portion of a conduit wall (fig. 6).

21. Regarding claim 53, Kenyon discloses the device wherein the respiratory gas delivery device (13) is embedded in the foam body (50) (column 4, lines 45-47).
22. Regarding claim 54, Kenyon discloses the device wherein the foam body is embodied in multiple parts (column 3, lines 2-4).
23. Regarding claim 55, Kenyon discloses the device wherein function components are inserted into the foam body (column 3, lines 44-46).
24. Regarding claim 56, Kenyon discloses the device wherein conduction structure components (38) are inserted into the foam body (column 4, lines 61-64) (fig. 1).
25. Regarding claim 57, Kenyon discloses the device wherein the conduction structure component is embodied as a breathing hose connection structure component (38) (column 4, lines 61-64) (fig. 1).
26. Regarding claim 58, Kenyon discloses the device wherein the foam body (50) forms a securing device (column 4, lines 45-47) for suspending the delivery device (13) (column 5, lines 30-35) and/or other function components of the CPAP device.
27. Regarding claim 61, Kenyon discloses the device wherein a further function component is a control unit (column 6, lines 60-62).

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. Claims 41, 64 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenyon (6,216,691).

30. Regarding claims 41 and 64, Kenyon discloses the claimed device but does not disclose wherein the foam part is injection molded. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to produce the molded foam parts using injection molding since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

31. Regarding claim 66, Kenyon discloses the claimed invention except for wherein the conduit wall is divided along a plane that is parallel to an axis of the conduit and the first and second portions interface with one another along said plane. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to first and second portions to interface with one another along a plane that is parallel to an axis of the conduit, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of forming a conduit wall. In re Dailey and Eilers, 149 USPQ 47 (1966).

32. Claim 44, 59, 60, 62 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenyon (US 6,216,691) in view of McCombs (US 7,156,903 B2).

33. Regarding claim 44, Kenyon discloses the claimed invention except for the first portion of the molded foam part and the second portion of the molded foam part have different material properties. McCombs teaches a sound enclosure device characterized in that the first portion of the molded part and the second portion of the molded part have different material properties (column 3, lines 22-30). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the foam parts of Kenyon to include different material properties as taught by McCombs in order to provide the advantage of more protection in specific areas.

34. Regarding claim 59, Kenyon discloses the claimed invention except for wherein a further function component is a power pack. McCombs teaches sound enclosure device wherein a further function component is a power pack, in the form of a battery (column 5, line 55) (fig. 4e). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Kenyon to include a power pack as taught by McCombs in order to provide the advantage of allowing the device to be used without an external power supply.

35. Regarding claim 60, Kenyon discloses the claimed invention except for wherein a further function component is a sensor device for pressure and/or volumetric flow. McCombs teaches a device wherein a further function component is a sensor device for pressure and/or volumetric flow (column 4, lines 60-62). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of

Kenyon to include a sensor as taught by McCombs in order to provide the advantage of allowing the device to determine malfunctions.

36. Regarding claim 62, Kenyon discloses the claimed invention except for wherein a further function component is a valve device. McCombs teaches a device characterized in that a further function component is a valve device (column 4, lines 60-62). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Kenyon to include a valve as taught by McCombs in order to provide the advantage of allowing the device to control flow through it.

37. Regarding claim 63, Kenyon discloses the claimed invention except for wherein a further function component is a switch device. McCombs teaches a device wherein a further function component is a switch device (30) (column 2, lines 47-48). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Kenyon to include a switch device as taught by McCombs in order to provide the advantage of allowing the device to be controlled by an operator.

### ***Response to Arguments***

38. Applicant's arguments with respect to claim 33, 34, and 36-64 have been considered but are moot in view of the new ground(s) of rejection. Further applicant's arguments concerning Kenyon failing to disclose the block (93) and insert (94) cooperating to define the conduit wall of the air-carrying conduit are not persuasive as Kenyon discloses an air carrying conduit being formed in part by the block (93) and insert (94) (column 6, lines 7-9).

### ***Conclusion***

39. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER BLIZZARD/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771